

COMMERCIAL COMMISSION  
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ILLINOIS INDEPENDENT TELEPHONE  
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Petition for initiation of an investigation of  
the necessity of and the establishment of a  
Universal Service Support Fund in accordance  
in accordance with Section 13-301(d) of The  
Public Utilities Act.

Docket No. 00-0233

ILLINOIS COMMERCE COMMISSION  
On Its Own Motion

Investigation into the necessity of and, if  
appropriate, the establishment of an universal  
support fund pursuant to Section 13-301(d) of  
the Public Utilities Act.

Docket No. 00-0335

(Consol.)

Phase 1

**Phase 1 Brief on Exceptions of MCI WorldCom, Inc.**

Pursuant to the Section 200.830 of the rules of the Illinois Commerce Commission ("Commission"), 83 Ill. Adm. Code Section 200.830, MCI WORLDCOM, Inc. ("MCIW" or "MCI WorldCom") respectfully submits this Brief on Exceptions in response to the Hearing Examiner's Proposed Order ("HEPO" or "Proposed Order") issued in Phase 1 of the above-captioned proceedings on October 3, 2000. The HEPO is well written and, for the most part, its conclusions are correct, well reasoned and solidly based on record evidence. However, MCI WorldCom respectfully submits that the HEPO erred in one narrow respect. As discussed in further detail below, the HEPO should be modified slightly before it is sent to the Commission for consideration.

**Exception Number One: The HEPO Erred By Failing to Adopt the Most Competitively Neutral Universal Service Cost Recovery Mechanism**

The HEPO erred by recommending that the Commission adopt a funding mechanism for the interim universal service fund (“Interim Universal Service Fund”) based on intrastate retail revenues as opposed to one based on intrastate retail revenues minus inter-carrier payments, or what the HEPO refers to as the “net revenue” approach. In reaching its conclusion, the HEPO relies on an analysis conducted by Verizon witness Mr. Weller in which he concludes that the revenue and net revenue funding approaches are the same. The HEPO specifically relies upon the following passage of Mr. Weller’s testimony:

If the fund were instead administered on a net revenue basis, the IXC would have a net revenue of \$6 (\$10 minus its payment to the LEC), and would thus owe 60 cents to the fund. The LEC would have revenue of \$4, and so would remit 40 cents to the fund. The LEC would then recover this expense through a 40 cent surcharge on its access bill to the IXC. The total amount of universal service expense the IXC would have to recover from its own end users through a surcharge would thus be \$1 – just the same amount as under the retail revenue method. Further, the effective cost to the IXC of using LEC access would be raised by 10% – again, just the same effect as the retail revenue method would have. In summary, the base of the contributions, the contribution rate, and the amount each end user must pay are all the same under both methods.

(Verizon Ex. 3 (Weller Rebuttal), p. 12; HEPO, p. 15 - 16).

Mr. Weller’s conclusion is wrong. Mr. Weller assumes that the “LEC would recover this expense [the universal service payment] through a 40 cent surcharge on its access bill to the IXC.” However, Mr. Weller’s analyses ignores that fact that the LEC is prohibited by law from recovering its universal service funding obligations through charges paid by other carriers, such as switched access rates, unbundled network element or reciprocal compensation charges.

Section 13-301(d) of the Illinois Public Utilities Act ("PUA") states that "[i]n determining cost recovery for any universal service support fund, the Commission shall not permit recovery of such costs from another certificated carrier for any service purchased and used solely as an input to a service provided to such certificated carrier's retail customers." (220 ILCS 5/13-301(d)).

Mr. Weller's analyses is flawed because it assumes that LECs can and will do something which they are prohibited by law from doing. In short, Mr. Weller's conclusion that the base of the contributions, the contribution rate, and the amount each end user must pay are all the same under the intrastate revenue method and net revenue method is wrong. Since the HEPO relies on Mr. Weller's erroneous analyses, the HEPO's conclusion concerning the appropriate funding methodology is based on a faulty premise.

All carriers' financial obligations to the any universal service support fund should be based on carriers' regulated intrastate revenue less inter-company payments. That is the most competitively neutral mechanism and the one which is most consistent with General Assembly's pronouncements about universal service and cost recovery.

### **Exception Number One Replacement Language**

Consistent with the reasons that a net revenue method for funding the Interim Universal Service Fund is competitively neutral and nondiscriminatory, MCI WorldCom respectfully submits that the six full paragraphs that appear under the "Commission Analysis and Conclusion on Funding Methodology" section of the HEPO starting at page 15 and ending on page 16 of the Proposed Order should be eliminated and replaced with the following:

Probably the most contentious issue in Phase I of this proceeding has been the determination of a competitively neutral and nondiscriminatory funding mechanism. We agree with the IITA, Staff and the IXC's that the requirements of Section 13-301(d) are very clear: all costs of the Interim Fund must be recovered *from all local exchange carriers and interexchange carriers certificated in Illinois on a competitively neutral and nondiscriminatory basis*. There is no question that the usage-based funding mechanisms proposed by Ameritech and Verizon violate Section 13-301. First, they do not impose any funding obligations on local exchange carriers, in direct contravention of the statute. Second, they discriminate against toll providers and in favor of local exchange carriers since toll providers would bear the entire burden of funding universal service. As such, they are not competitively neutral or nondiscriminatory and do not, therefore, comply with federal or state law.

Rather, we adopt the funding mechanism proposed by MCI WorldCom and agreed to by AT&T, which requires that each carrier's funding obligation be based upon the carrier's intrastate net retail revenues. We agree that carrier-to-carrier payments should be subtracted from a carrier's total intrastate retail revenues to avoid any double counting of revenues to be assessed for universal service support. We believe that subtracting such inter-carrier payments from revenues to be assessed is consistent with and most closely adheres to the concept that ingrained in Section 13-301 of the PUA that the Commission shall not permit one carrier to recover universal support "costs from another certificated carrier for any service purchased and used solely as an input to a service provided to such certificated carrier's retail customers." (220 ILCS 5/13-301(d)). We believe that access services, unbundled network elements used to provide local services and reciprocal compensation for termination of local traffic fall into the category of services purchased and used solely as inputs to services provided by other certificated carriers to their retail customers. The net revenue approach helps ensure that we achieve the General Assembly's intent in this regard.

While various parties have raised concerns about the administrative complexity of this funding mechanism, we are persuaded by the testimony of Mr. Sands that this funding mechanism has proven to be administratively workable in New York. All LECs and IXC's shall provide to the ISECA (the USF administrator) all information necessary to ensure that payments to the Interim Universal Service Fund are based on each carrier's intrastate retail revenues minus inter-carrier payments. The form that Mr. Sands attached to his rebuttal testimony illustrates the framework and manner in which this information can be provided to the ISECA. (MCI WorldCom Ex. 2, Schedule MRS 1). In sum, we believe that the net revenue method provides the most competitively neutral and nondiscriminatory method by which carriers should make payments into the Interim Universal Service Fund consistent with Section 13-301 of the PUA. As

discussed in Section G below, the net revenue approach shall also be used to true-up past payments made into the DEM Weighting Funds.

In addition, consistent with the change suggested above, the final sentence of the first full paragraph under Section G entitled "Commission Analysis and Conclusion on True Up Issues" should to include the following underlined language:

...ISECA , as the administrator of the Interim Fund, recalculate the funding obligation of all funding carriers based upon their annual retail revenues minus inter-carrier payments for each year beginning with the advent of the DEM weighting fund and to adjust those contributions up to the true up caps.

Finally, paragraph (12) of the findings paragraphs at page 18 of the HEPO and paragraph F. of the ordering paragraphs at page 19 of the HEPO should changed to include the following underlined language:

...all local exchange carriers and interexchange carriers certificated in Illinois shall contribute to the interim universal service fund based on their annual intrastate retail revenues minus inter-carrier payments, consistent with Section 13-301(d) of the PUA;

With the aforementioned changes, MCI WorldCom submits that the HEPO will be ready for consideration by the Commission.

**Exception Number Two: Inconsistencies Between Conclusions in the Body of the Order and Conclusions in the Findings and Ordering Paragraphs Should be Cured**

In the event that the Examiner and the Commission do not adopt the net revenue cost recovery approach as suggested in exception number, MCI WorldCom believes that the text in the body of the HEPO at page 16 should be modified slightly to be consistent with the language in the finding and ordering paragraphs and to more accurately depict the positions of the parties

in Phase 1 of this proceeding. The language in the findings and ordering paragraphs makes clear that "all local exchange carriers and interexchange carriers certificated in Illinois shall contribute to the interim universal service fund based on their intrastate retail revenues, consistent with Section 13-301(d) of the PUA." (See Findings paragraph (12) and ordering paragraph F. HEPO, pp. 18 - 19).

Both AT&T witness Ms. Conway and Sprint witness Mr. Stahly proposed that payments be made into the Interim Fund based on carriers' total intrastate retail revenues. (See, e.g., AT&T Ex. 2 (Conway Rebuttal), p.13; Sprint Ex. 1 (Stahly Direct), p. 3). In rebuttal testimony, Ms. Conway modified her position to support payments based upon total intrastate retail revenues minus inter-carrier payments, the method advocated by MCI WorldCom witness Mr. Sands. On the other hand, Verizon witness Weller testified that there should be no change to the existing funding methods for DEM Weighting and Illinois Universal Service Funds, unless and until the Commission determines in Phase 2 of this proceeding to establish a permanent fund.

According to Verizon witness Weller:

The ICC should adopt the Interim Fund, at the funding level proposed in the Stipulation. This Interim Fund should be a simple extension of the existing funds, and the current method of funding should similarly be continued pending the completion of Phase 2.

(Verizon Ex. 3 (Weller Rebuttal), p. 9).

Like Verizon, Ameritech took the position that there should be no change in the funding methodology for the Interim Universal Service Fund. (Ameritech Initial Brief, p. 9). Clearly, Verizon and Ameritech are of the opinion that there is no need to heed the statutory requirements of Section 13-301(d) for the Interim Fund.

## **Exception Number Two Replacement Language**

The final paragraph under Section F entitled "Commission Analysis and Conclusion on Funding Methodology" on page 16 of the Proposed Order states in part that "for the reasons set forth by GTE and Ameritech, the retail revenue funding methodology should be adopted for the interim fund." This language does not appear to accurately reflect the positions of the parties and should therefore be changed. This can be accomplished by simply deleting the language that says "for the reasons set forth by GTE and Ameritech." In the alternative, the final paragraph under Section F. can be deleted and replaced with the following paragraph to ensure that the body of the HEPO comports with the findings and ordering paragraphs and to make clear the basis for the HEPO's conclusion:

The Commission concludes that the intrastate retail revenue funding methodology should be adopted for the interim universal service fund, consistent with Sprint's proposal and AT&T's original proposal. The Commission notes that this methodology is also consistent with the funding method advocated Verizon for any permanent universal service fund that may be adopted in the future. We believe that this funding method is consistent with the requirements of Section 13-301(d) of the PUA and provides the easiest mechanism to achieve a more competitively neutral funding method in the short time in which the interim universal service fund must be implemented. By adopting the intrastate retail revenue method for determining payments into the interim fund, we do not foreclose the possibility that the net revenue method of cost recovery may be more appropriate in the event that we determine that a permanent universal service fund is warranted in Phase 2 of these proceedings.

With the aforementioned changes, the HEPO would more accurately reflect the positions of the parties and provide the Commission more flexibility in Phase 2 of these proceedings. For these reasons, if the Examiner and the Commission are not inclined to change the order based on

MCI WorldCom's Exception Number One, they should at a minimum change the order consistent with the MCI WorldCom's suggested replacement language under Exception Number Two.

### **Conclusion**

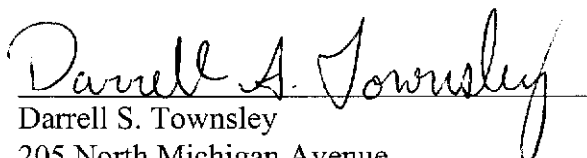
WHEREFORE, for all of the reasons stated above, MCI WorldCom respectfully requests that the Hearing Examiner's Proposed Order in Phase 1 of the above-captioned proceedings be revised consistent and in accordance with the foregoing exceptions prior to being submitted to the Commission for consideration.

Dated: October 10, 2000

Respectfully submitted,

**MCI WORLDCOM, Inc.**

By:



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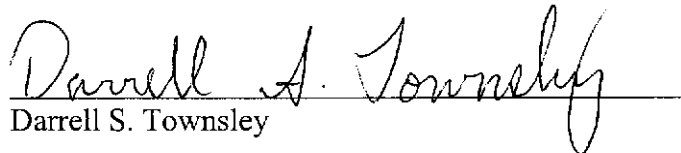
Docket No. 00-0335

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Phase 1

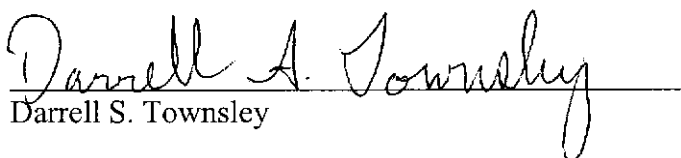
**NOTICE OF FILING**

Please take notice that on October 10, 2000, I caused to be sent by Airborne Express next business day delivery an original and eleven copies of the Phase 1 Brief on Exceptions of MCI WORLDCOM, INC. in the above-captioned matter to the Chief Clerk of the Illinois Commerce Commission, Donna Caton, 527 E. Capitol, Springfield, Illinois 62701.

  
Darrell S. Townsley

**CERTIFICATE OF SERVICE**

I, Darrell S. Townsley, certify that I caused to be served from the MCI WORLDCOM, Inc. offices in Chicago, Illinois a copy of the Phase 1 Brief on Exceptions of MCI WORLDCOM, Inc. in the above-captioned matter, together with a Notice of Filing, upon all active parties on the attached service list on the 10th of October, 2000, via electronic mail and one or more of the following methods of pre-paid delivery: Airborne Express next business day delivery, facsimile and/or United States First Class Mail.

  
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